

FOR MYSORE STATE

Development

(195 C) Department.

N^o 8 SERIES.

G.O. No. 2074

Dated 24-5-1950

[Despatch Abstract.]

Labour - I R O - Conventions
89 & 90 concerning regulation of night
work of women and young persons
in industries - Ratification by the Govt.
of India

Copy of letter No.L.C. 71(13)/49 dated 5th April 1950 from ~~the~~
Shri. S.P. Saksena, M.A.,B.Com., Director, Labour Conferences, New Delhi.
To Madras State.

Sub: Ratification by India of I.L.O. Conventions Nos.89
and 90 concerning the night work of women and young
persons employed in industry.

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I am directed to say that the Government of India have ratified the Conventions mentioned above. Attention is invited, in this connection to paragraphs 5 and 6 of the statement placed before the Constituent Assembly (Legislative) of India on 24th December, 1949 (Copy together with copies of the texts of the Conventions enclosed) The International Labour Office has been informed of the Government of India's decision to ratify the Conventions in question. I am to add that necessary action is being taken to enact the required amending legislation by the time the Conventions come into force, i.e. within one year from the date of the registration of the ratifications with the I.L.O.

- True copy-

Copy together with copies of enclosures forwarded to all the Ministers of the Government of India for information.

True copy.

STATEMENT TO BE PLACED BEFORE THE CONSTITUENT ASSEMBLY
(LEGISLATIVE)

Sub: Action proposed to be taken by the Government of India
on the Conventions and Recommendation adopted by the 31st
Session of the International Labour Conference.

The 31st Session of the International Labour Conference met
at San Francisco in June-July, 1946 and adopted the following con-
ventions and Recommendations:

- (1) Convention (No.87) concerning freedom of association
and the protection of the right to organise:

- (ii) Convention (No.88) concerning the organisation of the employment service;
- (iii) Recommendation (No.85) concerning the organisation of the employment service;
- (iv) Convention (no.89) concerning night work of women employed in industry (revised) 1948); and
- (v) Convention (No.90) concerning night work of young persons employed in industry (revised)(1948)

The texts of the above Conventions and Recommendation are placed on the table of the House in accordance with Article 19(5) of the Constitution of I.L.O.

2.. (i) Convention No.87 concerning freedom of association and the protection of the right to organise, confers on workers (and employers) a number of rights in regard to association and requires Member States ratifying it to undertake to allow due enjoyment of the following rights.

(i) the right to establish and to join organisations without previous authorisation (Article 2);

(ii) the right of organisations to draw up their constitutions to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate programmes without any interference from public authorities (Article 3)

(iii) the right not to be dissolved or suspended by administrative authority(Article 4);

(iv) the right to join federations. national and international (Article 5);

(v) the right to ~~enjoy~~ acquire legal personality (Article 7)

The enumeration of these rights is followed by an Article (Article 8) which reads as under and on the correct interpretation of which depends the decision whether the Convention should be ratified by India or not:

- " 1. In exercising the rights provided for in the Convention, employers and workers and their respective organisations, like other persons or collectivities, shall respect the law of the land.
2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention."

(ii) When the text of the Convention was being discussed at the Conference, it was generally understood that this Article would enable Member States to regulate the enjoyment of the rights guaranteed by the Convention so long as such regulation could be justified in the public interest and in the interests of the members themselves without any intention to deprive the workers (or employers) of the right to organise. Thus, the provision in the Indian Trade Unions Act, 1926, laying down that only a certain proportion of the office bearers of a Union can be outsiders was, it was thought, not contrary to the terms of the Convention.

(iii) The Government of India have, however, now been advised that the restrictive effect of the Convention on the legislative authority of the State in this field would be much greater than what was probably intended. Article 8 of the Convention is obviously intended to be a compromise between the school which believes in the final voice resting with the State legislature and the school which will make the rights accepted by the State under the Convention fully binding on the State legislature. While paragraph (2) of the Article is very clear in its intention and effect, paragraph (1) does not preserve to the legislature any right to frame a law contrary to the provisions of paragraph (2).

Further, the words "like other persons and collectivities" in paragraph (1) suggest that any restriction on the rights mentioned in the Convention should be of a general character and not imposed on any particular section.

(iv) According to the above view, the Indian Trade Unions Act is, ~~unlike~~ on the face of it, a law regulating the manner in which trade unions may be registered and thereby acquire legal personality. The very fact of regulation imposes some restrictions on freedom of association.

(v) The Government of India feel that in the circumstances it would not be advisable for them to ratify the Convention as it stands. For, if the rights guaranteed to associations are unrestricted and invariable, it would be difficult for a country like India, where the trade union movement is still in its infancy, to take responsibility for orderly progress in the country. Further, apart from the existing restrictions, as embodied in the Trade Unions Act, it may be necessary to impose further restrictions from time to time, or modify the existing ones, in the interests of public order or morality or other justifiable cause. In fact, such restrictive provisions are fully covered by the Universal Declaration of Human Rights which permits the imposition of "such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic Society". Ratification of the Convention ^{we} would, however, bind Government to the letter of the law and might, in this case, take away the power to impose any restrictive conditions however necessary in the public interest.

(vi) It has therefore been considered advisable to seek further clarification of Article 8 from the I.L.O. before taking a final decision regarding ratification.

Accordingly, the Director-General of the I.L.O. has been requested to inform the Government of India whether they may act on

the assumption that notification will not affect, their right either to retain the existing provisions in the Indian Trade Unions Act or to enact, in future, similar restrictive provisions ~~considered~~ considered necessary solely from the point of view of the just requirements of morality, public order and general welfare. He has also been requested to apprise the Government of India of the position taken by other Member States of the Organisation in the matter of ratification of this Convention

3(1) Convention No.88 concerning the organisation of the employment service. This lays down that each Member State shall maintain or ensure the maintenance of a free public employment service, ~~whose~~ whose duty shall be to ensure in co-operation, where necessary, with other public and private bodies concerned, the best possible organisation of the employment market as an integral part of the national programme for the achievement and maintenance of full employment ~~and~~ ^{and} the development and use of productive resources. It further provides that the employment service shall consist of a national system of employment offices under the direction of a national authority. The Convention also specifies the structure of the employment service organisation, prescribes the functions of the employment offices and the manner in which the exchanges should be manned, emphasises the need for initiating and developing special arrangements for juveniles and provides for the association of employers' and workers' organisations in the working of the employment exchanges.

(ii) It will be recalled that towards the end of 1945, the Government of India set up a Directorate General of Resettlement and Employment to deal with the resettlement and employment, in civil life, of demobilised services personnel and discharged war-workers. The scope of the Organisation has since been extended to meet the needs of all categories of persons in search of employment. The functions of the Organisation have also been considerably enlarged and the present constitution, structure and working of the Organisation is mostly on the lines laid down in the I.L.O. Convention, thus enabling India to ratify the same.

However, the sole obstacle to ratification lies in the fact that the whole set up of the Indian Employment Service is still temporary. The present position is that the organisation will continue under the Central Government upto July, 1950. Though the Provincial Governments have, in principle, agreed to take over the Exchanges gradually no final decision has yet been taken regarding the future of the organisation. The whole question will have to be reviewed when the period for which the Organisation has been sanctioned on the existing basis is about to expire. A final decision regarding ratification of this Convention can, therefore, be taken only after the future of the Employment Service Organisation is finally settled. The Government of India accordingly propose to intimate to the International Labour Office that while they are in full agreement with the standards laid down in the Convention which have already been given effect to in India they are unable to ratify the Convention until the future of the Employment Service Organisation is finally settled.

④(i) Recommendation No. 83 - The Employment Service Recommendation

This is a supplement to the above Convention, detailing the steps that should be taken for the proper organization of employment offices collection of employment market information, preparation of an annual national manpower budget, facilitating mobility of labour, co-operation between the employment service and other public and private bodies concerned with employment problems and international co-operation among employment services.

(ii) Unlike a Convention, it is not incumbent upon Member States to give full effect to the provisions of the Recommendations all at once, but only to accept the principles and to undertake gradual implementation of the same as found practicable. Some of the suggestions contained in the Recommendation have already been given effect to in India, but the progress that can be achieved in ~~implementing~~ implementing the other suggestions, e.g., collection of employment market

information , ~~preparation~~ preparation of an annual manpower budget, etc., will depend upon the speed with which the work of the Employment Service Organisation can be expanded which in turn depends upon the country's financial resources. At the moment, however, the need for economy, both at the Centre and in the Provinces, imposes severe limitations on any appreciable broadening of the work of the organisation. Moreover, the future of the Organisation will have as already stated, to be decided before embarking upon such an extension of activities.

5.(1) Convention No.89 concerning night work of women employed in industry.

This constitutes a second revision of Convention No.4, which was first revised by Convention No.41. India had ratified both the earlier Conventions. The principal provision in the new Convention is that night work of women shall be prohibited, in the case of India, in factories and mines, the term night being defined as a period of at least eleven consecutive hours, including an interval of at least seven consecutive hours falling between 10 P.M. and 7 A.M. The interval might begin at 11 P.M. provided the employers and workers' organisations concerned are consulted before this is prescribed.

(11) The Factories Act, 1948, prohibits the employment of women between 7 P.M. and 6 A.M. and is thus in consonance with the Convention. In the case of Mines, however, while the employment of women in underground work is altogether banned, no restriction has as yet, been placed on the employment of women at night on surface work. Steps are already being taken to amend the Indian Mines Act in accordance with the relevant provision in this Convention.

The Government of India therefore propose to ratify the Convention

6(1) Convention No.90 concerning night work of young persons employed in industry

This is a revision of Convention No.6 and provides that in the case of India night work of young persons employed in factories, mines to which the Indian Mines Act applies; railways and

ports, shall be prohibited as under:-

(i) for those between the ages of 13 and 15 years for a period of at least twelve consecutive hours including an interval of eight consecutive hours falling between 10 P.M. and 6 A.M. and

(ii) for those between the ages of 15 and 17 years for a period of twelve consecutive hours including an interval of at least seven consecutive hours falling between 10 P.M. and 7 A.M.

(II) The present position in this respect under the Indian Law is as follows:-

(a) The Factories Act, 1948, prohibits the employment of children below 14 years. Those between 14 and 15 years cannot work between 7 P.M. and 6 A.M.

(b) The Indian Mines Act, 1923, altogether prohibits the employment of young persons below 15 years and persons between the ages of 15 and 17 years cannot work underground unless they have been medically certified fit to work as adults. There is no bar on night work as such.

(c) The Employment of Children Act, 1938, prohibits the employment of children below 15 years on railways and at ports. There is no bar against night work for those above 15 years.

(iii) The national law is thus deficient in two particulars, In the first place, the period of night, in the case of children employed in factories will have to be extended by one hour. Secondly, all young persons under 17 years of age will have to be exempted from night work, in factories (to which the Factories Act applies), Mines (to which the Indian Mines Act applies), railways and ports irrespective of the fact whether or not they

have been declared medically fit to work as adults.

(iv) The Government accept the standards laid down in the Convention and ~~con-~~ have taking necessary steps to amend the existing legislation accordingly.

It is accordingly proposed to ratify this Convention.

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Superintendent.

